

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 28 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0149-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
ADONIS LEWIS,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008165676001DT

Honorable Michael D. Jones, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney  
By Adam Susser

Phoenix  
Attorneys for Respondent

Natalee Segal

Phoenix  
Attorney for Petitioner

K E L L Y, Judge.

¶1 Petitioner Adonis Lewis seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear

abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Lewis has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Lewis was convicted of robbery and the trial court sentenced him to an enhanced, presumptive, ten-year prison term. His conviction and sentence were affirmed on appeal. *State v. Lewis*, No. 1 CA-CR 09-0294 (memorandum decision filed Jan. 19, 2010). Lewis thereafter initiated a post-conviction relief proceeding, arguing in his petition (1) the trial court had improperly “encouraged the jurors to look at the court’s website,” (2) the prosecutor had improperly commented on Lewis’s failure to testify at trial, (3) the probation surcharge he had been ordered to pay was illegal, and (4) trial counsel had been ineffective in failing to make objections in relation to the first two claims. The court summarily denied relief.

¶3 On review, Lewis has abandoned his other claims, *see* Ariz. R. Crim. P. 32.9(c)(1), and argues only that the trial court abused its discretion in concluding that the prosecutor’s comments at trial had not improperly referenced Lewis’s failure to testify and that, because “[t]here were no impermissible comments made about the defendant’s decision not to testify,” there were “no grounds for post conviction relief.” But, Lewis’s claim that the prosecutor had improperly commented on his failure to testify could have been raised on appeal, *see State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985), and is precluded, *see* Ariz. R. Crim. P. 32.2(a)(3). And Lewis has not argued on review that appellate counsel was ineffective in failing to raise the claim. *See* Ariz. R. Crim. P. 32.9(c)(1). Thus, we cannot say the court abused its discretion in summarily denying relief on Lewis’s petition. *Cf. State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214,

1219 (1984) (appellate court is obliged to affirm trial court's ruling if result was legally correct for any reason). Therefore, although we grant the petition for review, relief is denied.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge